

NOTICE

Decision filed 07/11/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110368-U

NO. 5-11-0368

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Massac County.
)	
v.)	No. 11-DT-37
)	
SUSAN WINDHORST,)	Honorable
)	Mark M. Boie,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE DONOVAN delivered the judgment of the court.
Justices Stewart and Wexsten concurred in the judgment.

ORDER

- ¶ 1 *Held:* Court erred in rescinding summary suspension of driver's license on grounds that arresting officer failed to conduct sobriety tests in the field.
- ¶ 2 The State appeals the order of the circuit court of Massac County rescinding the summary suspension of the driver's license of defendant, Susan Windhorst. Defendant was arrested for driving under the influence of alcohol in April of 2011. Proceedings for the statutory summary suspension of her license were begun. Defendant filed a petition to rescind the suspension arguing that the arresting officer did not have reasonable grounds to believe that she was under the influence of alcohol. The circuit court granted the petition, concluding that although there was sufficient evidence that defendant had been drinking, such evidence should have led the officer to administer field sobriety tests prior to arresting her. We reverse.
- ¶ 3 At approximately 1:16 a.m. on April 2, 2011, Officer John McNeely was assisting

another officer with a traffic stop. While doing so, he noticed a black SUV drive by without headlights. The officer got into his vehicle and started following the SUV. When the officer pulled in behind the SUV, its headlights were still off. The SUV turned right onto another street, turning so widely that at one point it was entirely in the lane for opposing traffic. The officer activated the lights on his vehicle to pull over the SUV. The SUV made another wide right turn and pulled into a forward-facing parking space. The SUV struck the curb, leaving the passenger side tire on top of the curb and sidewalk and nearly striking a light pole. The SUV was not lined up with the parking space lines. The officer approached the vehicle and asked the driver for her license. The officer then advised the driver, defendant, of the reasons for the stop. Defendant's responses trailed off. Her speech was slurred, her eyes were red and glassy, and she was swaying back and forth in her seat. The officer also noticed a faint odor of alcohol and concluded that defendant was intoxicated. Defendant began searching for her license, first looking between the driver and passenger seats and then in the glove compartment. She came across the owner's manual and appeared to be reading it instead of searching for her license and proof of insurance. The officer commented that defendant had had way too much to drink and defendant responded "probably." The officer asked her to step out of the vehicle. Defendant staggered as she exited and began to fall. The officer helped her and then told her he was placing her under arrest for driving under the influence of alcohol. Defendant requested to take her shoes off. Even with her shoes off, however, defendant staggered and swayed as she walked to the police car. Given the time and location of the stop, the officer decided to conduct further sobriety tests at the police station.

¶4 At the hearing on defendant's petition to rescind suspension, the only witness to testify was the arresting officer. The video of her traffic stop was also entered into evidence. The court determined that the traffic stop was justified by specific, articulable facts that formed a reasonable suspicion of traffic violations. The court further noted that the officer had

enough evidence that defendant had been drinking that night, but that such evidence should have led him to administer field sobriety tests prior to arresting her. The court specifically noted that the officer called for a tow truck relatively soon after stopping her. The court concluded the officer lacked probable cause or reasonable grounds to place defendant under arrest for driving under the influence.

¶ 5 In reviewing the circuit court's order granting a petition to rescind the statutory summary suspension of a defendant's license, we are to review the trial court's factual findings for clear error. We are to review *de novo*, however, the court's ultimate legal determinations. See *People v. Wear*, 229 Ill. 2d 545, 561-62, 893 N.E.2d 631, 641 (2008). Here, we agree with the State that defendant did not establish a *prima facie* case for rescission, and that the facts establish reasonable grounds and probable cause to believe that defendant was driving under the influence.

¶ 6 A hearing on a petition to rescind is a civil proceeding in which the driver bears the burden of proof. *Wear*, 229 Ill. 2d at 559-60, 893 N.E.2d at 640. To establish a *prima facie* case for rescission, a defendant must present some evidence on every element essential to the cause of action. *People v. Helt*, 384 Ill. App. 3d 285, 287, 892 N.E.2d 594, 597 (2008). To establish a *prima facie* case when arguing that the arresting officer did not have reasonable grounds for believing that the defendant was under the influence of alcohol, the defendant must present some evidence to negate the allegation that he or she exhibited symptoms of alcohol use. *People v. Tucker*, 245 Ill. App. 3d 161, 165, 614 N.E.2d 875, 877 (1993). In this instance, defendant did not produce any evidence that she was not driving under the influence of alcohol or that the officer did not have reasonable grounds to believe she was. Questioning whether events necessarily demonstrated intoxication is not affirmatively asserting sobriety. Moreover, a possible innocent explanation does not lessen the suspicion of intoxication resulting from the conduct. See *People v. Neal*, 2011 IL App (1st) 092814,

¶ 13. For instance, stumbling because of footwear does not indicate a lack of intoxication. Defendant's only other evidence is that field sobriety tests were not conducted until they reached the police station after she was arrested. Field sobriety tests are not required to establish probable cause, however. See, e.g., *People v. Wingren*, 167 Ill. App. 3d 313, 320-21, 521 N.E.2d 130, 135 (1988); see also *People v. Cortez*, 361 Ill. App. 3d 456, 464, 837 N.E.2d 449, 457 (2005); *People v. Brodeur*, 189 Ill. App. 3d 936, 940-41, 545 N.E.2d 1053, 1056-57 (1989). The facts established in the rescission hearing—driving without headlights on, turning into the opposite lane of traffic, parking outside the lines of the parking space with one tire on the curb, nearly hitting a light pole, glassy eyes, the odor of alcohol, the inability to speak coherently, her admission that she probably drank too much, swaying in her seat, and stumbling upon exiting the vehicle—clearly show that the officer had reasonable grounds to believe she was driving under the influence of alcohol. Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the person arrested has committed a crime. *Wear*, 229 Ill. 2d at 563, 893 N.E.2d at 642. Here, the evidence uniformly suggested a high probability that defendant was under the influence of alcohol.

¶ 7 For the foregoing reasons, we reverse the judgment of the circuit court of Massac County granting the petition to rescind defendant's statutory summary suspension.

¶ 8 Reversed.